

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	§	
Peppers, Cherita et al	§	
Serial No. 10/087,384	§	Confirmation No.: 3346
Filed: March 1, 2002	§	Group Art Unit: 2192
For: METHOD AND APPARATUS FOR	§	Examiner: Romano, John J.
AUTOMATED OPERATING	§	
SYSTEMS UPGRADE	§	

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Responsive to the Office Action dated June 30, 2006, please consider the following remarks in connection with the pre-appeal brief request for review. Review of the final rejection is requested for the following reasons.

The rejection of claims 1-9, 13-22 and 26 is not supported by a *prima facie* case of obviousness for claims 1-9, 13-22 and 26.

Claims 1-8, 13-21 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dodson, US 6,513,159 B1 (art of record and hereinafter **Dodson**), and further in view of Killebrew et al., US 5,577, 244 (hereinafter **Killebrew**). Claims 9 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Dodson**, in view of **Killebrew** and further in view of Kenyon et al., US 2002/0100035 (hereinafter **Kenyon**). A *prima facie* case of obviousness is missing however, at least because there is no support for an obviousness rejection of the claimed subject matter as a whole, because **Dodson**, **Killebrew** and **Kenyon** fail to disclose each element of the claim or suggest the missing elements.

Independent claims 1 and 14 include: "the program downloading the new operating system if required; copying the new operating system to a directory structure; the program scanning for all drivers on the target system; the program downloading any additional required

drivers to the new directory structure if needed to support the new operating system; and the program scanning to identify any factory installed software that are incompatible with the new operating system."

The USPTO has stated:

"But **DODSON** does not expressly disclose" ...copying the new operating system to a directory structure ..." or "...the program downloading any additional required drivers to the new directory structure if needed to support the new operating system ...". However **Killebrew** discloses:

"...the program preparing a directory for any new drivers needed for operation of the new operating system." (e.g., see Fig. 4 & Column 12, lines 18-24), wherein a target director is created (prepared) for the new drivers needed for operation of the new operating system."

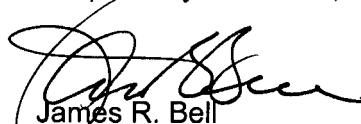
However, the invention discloses and claims: the program scanning for all drivers on the target system; the program downloading any additional required drivers to the new directory structure to support the new operating system.

Therefore, the prior art does not teach or suggest scanning for all drivers on the target system and downloading any additional required drivers to support the new operating system.

"All drivers" includes current and new drivers, and is not limited to only the new drivers.

Other reasons for the patentability of claims 1-9, 13-22 and 26 have been previously presented and will be maintained should the filing of an appeal become necessary.

Respectfully submitted,


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Dated: 8-23-06
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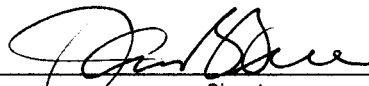
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PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
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		10/087,384	March 1, 2002
		First Named Inventor	
		Peppers, Cherita et al	
		Art Unit	Examiner
		2192	Romano John J.
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>26,528</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below".</p>			


Signature

James R. Bell

Typed or printed name

512-867-8407

Telephone number

8-25-06

Date

☒ *Total of one forms are submitted.

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